**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL REVISION APPLICATION No.101 of 2001**

**For Approval and Signature:**

**HONOURABLE MR. JUSTICE BANKIM N. MEHTA**

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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**VIDHYABEN MANILAL PATEL - Petitioner**
**Versus**
**ROSHANBHAI SHANKARBHAI PATEL & ANR. - Respondents**

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**Appearance :**
MR AMRISH K. PANDYA FOR MR DR BHATT for Petitioner.
MR HARNISH V. DARJI FOR MR YOGESH S LAKHANI for Respondent No.1.
MR KC SHAH, APP for Respondent No.2.

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**CORAM : HONOURABLE MR. JUSTICE BANKIM N. MEHTA**

**Date : 13/12/2007**

**ORAL JUDGMENT**

The petitioner, original complainant, has filed this application under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 [*"the Code"* for short] and challenged the judgment and order of

acquittal dated 6th February 2001 rendered by the learned Additional Sessions Judge, Bharuch camp at Rajpipla, in Sessions Case No.102 of 1994.

2. On the basis of the complaint filed by Vidhyaben Manilal Patel, an offence under Sections 323, 307, 504 of the Indian Penal Code and Section 135 of the Bombay Police Act, 1951 was registered at C.R.No.I-144 of 1993 before Rajpipla Police Station and the investigation was started. On completion of the investigation, charge-sheet came to be filed against the respondent No.1 herein, original accused, in the Court of learned Judicial Magistrate First Class, Rajpipla, for the aforesaid offences. As the offences were exclusively triable by a Court of Sessions, the case was committed to Sessions Court, Bharuch, and it was registered as Sessions Case No.102 of 1994.

3. The learned Additional Sessions Judge, Bharuch camp at Rajpipla, framed charge at Exhibit 1 for the aforesaid offences against the respondent No.1-accused, who denied having committed the offence and claimed to be tried. Therefore, the prosecution adduced the evidence. On completion of recording of the evidence, incriminating circumstances appearing in the evidence against the respondent No.1 were explained to him. The respondent No.1 in his further statement recorded under Section 313 of the Code stated that a false case is filed against him. After hearing the learned Public Prosecutor and the learned

advocate for the respondent No.1-accused, the trial Court acquitted the respondent No.1-accused for the offences charged against him.

Being aggrieved by the said decision, the petitioner-original complainant has preferred present Revision Application.

4. I have heard Mr.Amrish K. Pandya, learned advocate for Mr.D.R.Bhatt, learned advocate for the petitioner, Mr.Harnish V. Darji, learned advocate for Mr.Y.S.Lakhani, learned advocate for the respondent No.1, and Mr.K.C.Shah, learned Additional Public Prosecutor for the respondent No.2-State. I have also perused the impugned judgment and order as well as Record & Proceedings of the case.

5. It appears from the prosecution case that the respondent No.1-accused gave one injury by a *rampuri* knife on the stomach (*Iiliac Fossa*) of Manilal Bechardas Patel, P.W.-2.

In order to prove the injury, the prosecution examined injured Manilal Bechardas Patel as P.W.-2 at Exhibit 13. According to this witness, the accused inflicted one injury with knife. The prosecution also examined Dr.Kantilal Dwarkadas, Medical Officer of Rajpipla Hospita, as P.W.-6 at Exhibit 18. According to the witness, the injured was brought to him for treatment and he had injury over right *iiliac fossa*. The witness was shown *muddamal* article knife and the witness deposed that the injury found on injured could have been possible by such *muddamal* article

knife. The prosecution also examined Dr.Sunilkumar Mavjibhai Patel as P.W.-7 at Exhibit 21. According to him, the injured was shifted to SSG Hospital, Baroda after primary treatment at Rajpipla Hospital and he treated him. According to the doctor, the injured had two injuries and the injuries were possible by *muddamal* article knife.

The prosecution also produced medical certificates at Exhibits 19 and 22. Certificate, Exhibit 19, is given by the Medical Officer of Rajpipla Hospital. It indicates that the injured had one injury over right *iiliac fossa* and the injured was transferred to SSG Hospital, Baroda, for further treatment. Certificate, Exhibit 22, is given by SSG Hospital, which indicates that the injured had two incised wounds.

6. The prosecution examined complainant – Vidhyaben Manilal Patel as P.W.-1 at Exhibit 11. According to this witness, the respondent No.1-accused caused one injury by knife. The prosecution produced complaint at Exhibit 12. It also indicates that the respondent No.1-accused gave one blow with knife. This evidence is contrary to the medical evidence. In view of this evidence, there is discrepancy in respect of injuries. Therefore, the prosecution case becomes doubtful that one injury was caused to the injured. It also appears from the deposition of P.W.-1 that there was dispute with grandfather of the accused before about two years. Therefore, possibility of false implication of the respondent No.1-accused cannot be ruled out.

7. The prosecution produced discovery *panchnama* at Exhibit 27, but *panch* witness Kanchanbhai Pochabhai (PW-9) examined at Exhibit 26 has not supported the prosecution case. It also appears from the *panchnama* that the weapon allegedly used in the offence was discovered from the open space. Therefore, discovery *panchnama* cannot be relied upon to connect the accused with the offence. It appears that no blood was found on the *muddamal* weapon. Therefore, it is difficult to believe that *muddamal* weapon was used in the commission of offence. The prosecution failed to prove that the respondent No.1-accused committed assault with *muddamal* weapon.

8. The prosecution examined Manishkumar Parshottamdas Patel (PW-3) at Exhibit 15. The witness is nephew of the injured. The witness also deposed that one blow with knife was inflicted to the injured. In view of the fact that this witness is related to the injured and there was dispute between the complainant and grandfather of the accused, it would not be safe to rely upon the oral testimony of this witness without corroboration.

9. The prosecution examined independent witnesses Jashubhai Jayantibhai (PW-4) at Exhibit 16 and Kantibhai Maganbhai (PW-5) at Exhibit 17. However, both these witnesses do not lend any support to the prosecution case and they have turned hostile. Therefore, except the

oral testimony of two interested witnesses, there is no other cogent, reliable and convincing evidence to implicate the respondent No.1-accused in the offence. Even the medical evidence is also contrary to the prosecution case.

10. It is settled proposition that an order of acquittal passed by a trial Court should be sparingly interfered with by the High Court in its revisional jurisdiction. The interference with the order passed by the trial Court is limited only to exceptional cases when it is found that the order under revision suffers from glaring illegality or has caused miscarriage of justice or when it is found that the trial Court has overlooked material evidence. Therefore, ordinarily, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the trial Court unless glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. Therefore, the High Court in its revisional power does not ordinarily interfere with judgment of acquittal passed by the trial Court unless there has been manifest error of law or procedure.

11. In the case on hand, the petitioner has failed to point out that there is glaring illegality or that the trial Court has overlooked the material evidence. It is also not indicated that there is manifest error of law or procedure.

12. In view of the above, the learned trial Judge was justified in passing the impugned judgment and order acquitting the respondent No.1-accused for the offences charged against him. The learned advocate for the petitioner has failed to point out that the impugned judgment and order is perverse or erroneous.

In the result, the Revision Application fails and is dismissed. The impugned judgment and order dated 6th February 2001 rendered by the learned Additional Sessions Judge, Bharuch camp at Rajpipla, in Sessions Case No.102 of 1994 is hereby confirmed. Rule is discharged.

***[Bankim N. Mehta, J.]***

***Rajendra***